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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
[PORTLAND DIVISION]

LISA FOX, an Individual,
Plaintiff,

v.

MASSDROP INC., a Delaware Corporation,
SPREADSHIRT, INC., a Delaware Corporation,
BOOSTAHOLICS an unknown entity, and
MICHAEL BERENIS, an individual.
Defendants.

Case No.: 3:17-cv-2066

COMPLAINT FOR COPYRIGHT
DAMAGES

DEMAND FOR JURY TRIAL

Plaintiff LISA FOX (hereinafter, "Plaintiff"), for her complaint against MASSDROP INC., a Delaware Corporation (hereinafter "MASSDROP"), SPREADSHIRT, INC., a Delaware Corporation (hereinafter "SPREADSHIRT"), BOOSTAHOLICS INC., an unknown entity (hereinafter "BOOSTAHOLICS"), and MICHAEL BERENIS, an individual, (hereinafter "BERENIS"), (all collectively, hereinafter "Defendants"), alleges as follows:

NATURE OF ACTION

1. This is a civil action seeking damages and injunctive relief for copyright infringement under 17 U.S.C. § 101 et seq. Plaintiff, by Plaintiff's attorneys, brings this action to challenge the activities of Defendants with regard to the unlawful use of Plaintiff's copyrighted image (hereinafter "Image"). Defendants have violated Plaintiff's exclusive rights as copyright owner pursuant to 17 U.S.C. § 106, and this conduct has caused Plaintiff damages.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331 (federal question), and § 1338(a) (copyrights).

3. This Court has personal jurisdiction over Defendants because a substantial part of the infringing acts complained of were directed against Plaintiff within the state of Oregon, and Defendants have caused injury to Plaintiff within the state of Oregon.

4. Venue in this judicial district is proper under 28 U.S.C. § 1391 in that this is the judicial district in which a substantial part of the events and omissions giving rise to Plaintiff's claims occurred.

PARTIES

5. Plaintiff is an individual residing in the state of Oregon, and is a professional graphic designer by trade.

6. Plaintiff is a "copyright owner" who holds "exclusive rights" to "copyrighted work[s]" pursuant to 17 U.S.C. §§ 101 and 106.

7. Defendant MASSDROP is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business located at 655 Montgomery Street, Suite 800, San Francisco, California, 94111.

8. Defendant SPREADSHIRT is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business located at 186 South Street, 3rd Floor, Boston, Massachusetts, 02111.

9. Defendant BOOSTAHOLICS is an unknown entity.

10. Defendant BERENIS is an individual residing in the state of Florida.

FACTUAL ALLEGATIONS

11. Plaintiff created the original Image in 1999, while a student at the Pacific Northwest College of Art. The Image is an animated depiction of a monkey and a football, referencing a common military euphemism used when someone is behaving in an incompetent manner or has mismanaged a situation. Exhibit 1.

12. Plaintiff has used the Image on merchandise such as stickers, hats, and t-shirts, and sells these items via her website <http://www.monkeyfuckingafootball.com/order.html>, Exhibit 2.

13. Plaintiff has ownership rights and copyrights to the Image. The copyright was registered as Visual Material in 2004, under registration number VAu000617323. Exhibit 3.

14. MASSDROP is an online service that acts as a middleman between manufacturers and customers by providing an online platform for manufacturers to sell their products on.

15. SPREADSHIRT is an online platform that allows third-parties to upload designs for sale on assorted items of clothing such as t-shirts.

16. BERENIS, according to his LinkedIn profile, is a self-styled “Automotive Influencer”.

17. BERENIS hosts an online show called BOOSTAHOLICS, which is about car culture. BOOSTAHOLICS merchandise can be bought online.

18. BOOSTAHOLICS is solely owned and operated by BERENIS and therefore the corporate form of BOOSTAHOLICS is the alter-ego of BERENIS and the acts and conduct of BERENIS can be imputed to BOOSTAHOLICS.

CLAIMS FOR RELIEF
COUNT I – COPYRIGHT INFRINGEMENT
Violation of 17 U.S.C. § 101 et seq.

19. Plaintiff incorporates by reference paragraphs 1-18 of this Complaint as though fully stated herein.

20. Defendants' use of Plaintiff's Image was never authorized, permitted or allowed by Plaintiff.

21. BERENIS and BOOSTAHOLICS unlawfully used Plaintiff's Image, without Plaintiff's express or implied authority, on BOOSTAHOLICS' promotional material, website, and merchandise such as t-shirts, Exhibit 4.

22. Plaintiff is informed and believes and thereon alleges that MASSDROP obtained the Image from BERENIS and BOOSTAHOLICS and then displayed, printed, and distributed and/or sold t-shirts and other garments or products featuring designs identical to or substantially similar to the Image, Exhibit 5.

23. Plaintiff is informed and believes and thereon alleges that SPREADSHIRT obtained the Image from BERENIS and BOOSTAHOLICS displayed, printed, and distributed and/or sold t-shirts and other garments or products featuring designs identical to or substantially similar to the Image, Exhibit 6.

24. Plaintiff is informed, believes, and thereon alleges that Defendants deliberately and willfully infringed upon Plaintiff's copyrights in Image pursuant to Title 17 of the U.S. Code § 106. Defendants reproduced, prepared derivative work, displayed, published, communicated, benefited through, posted, publicized, and otherwise held out to the public for commercial benefit Plaintiff's Image without Plaintiff's consent or authority, and acquired monetary gain and market benefit as a result.

25. Plaintiff has suffered irreparable injury as a result of these copyright infringements by Defendants and will continue to do so unless Defendants are enjoined by this Court.

26. As a result of Defendants' violation of Title 17 of the U.S. Code, Plaintiff is entitled to statutory damages pursuant to 17 U.S.C. §504(c).

27. As a result of the Defendant's violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C § 505 from Defendants.

28. Plaintiff is also entitled to injunctive relief to prevent or restrain further infringement of the Image pursuant to 17 U.S.C. § 502.

JURY DEMAND

29. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby demands a jury trial on all issues and causes of action triable to a jury.

PRAYER FOR RELIEF


Plaintiff respectfully prays for the following relief, against all Defendants in this case:

A. Entry of judgment that Defendant has infringed the copyrights in the Image;

- B. An award of statutory damages from Defendant's infringements, in an amount to be proven at trial, in accordance with 17 U.S.C. § 504(c), with interest;
- C. Preliminary and permanent injunctive relief requiring Defendant to deliver for destruction all copies of the Image in accordance with 17 U.S.C. § 503(b);
- D. Enjoining Defendant from further infringement of all Image pursuant to 17 U.S.C. § 502;
- E. An award of the costs and reasonable attorneys' fees Plaintiff incurred in bringing this action; and
- F. An award of any other and further relief as the Court deems just and equitable.

Date: December 29, 2017

Respectfully submitted,

By: 
Kiren Rockenstein (SBN 175638)
Law Offices of J. Curtis Edmondson
Attorney for Plaintiff